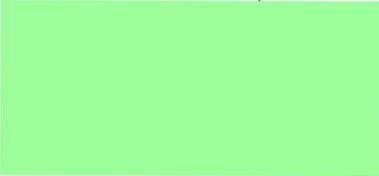


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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave. N.W., MS 2090
Washington, DC 20529-2090

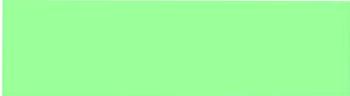


U.S. Citizenship
and Immigration
Services



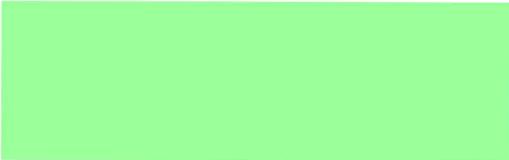
DATE: Office: CALIFORNIA SERVICE CENTER FILE: 

FEB 11 2013

IN RE: Petitioner: 
Beneficiary: 

PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

ON BEHALF OF PETITIONER:

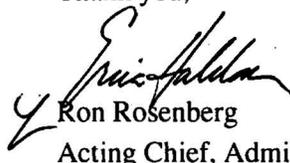


INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,


Ron Rosenberg

Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the nonimmigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

The petitioner seeks to employ the beneficiary as an L-1B nonimmigrant intracompany transferee pursuant to section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). The petitioner is an Ohio corporation established in 2008. It sells plastic parts manufactured by its Japanese parent company, [REDACTED]. The petitioner seeks to employ the beneficiary in a specialized knowledge capacity as a mold and tool designer for an initial period of three years.

The director denied the petition, finding the petitioner failed to establish that the beneficiary has specialized knowledge and that it would employ him in a specialized knowledge capacity.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO. On appeal, counsel for the petitioner submits a brief and additional supporting evidence. He asserts that the evidence of record satisfies the petitioner's burden of proof and establishes that the beneficiary possesses specialized knowledge and that the petitioner will employ him in a specialized knowledge capacity.

I. The Law

To establish eligibility for the L-1 nonimmigrant visa classification, the petitioner must meet the criteria outlined in section 101(a)(15)(L) of the Act. Specifically, a qualifying organization must have employed the beneficiary in a qualifying managerial or executive capacity, or in a specialized knowledge capacity, for one continuous year within three years preceding the beneficiary's application for admission into the United States. In addition, the beneficiary must seek to enter the United States temporarily to continue rendering his or her services to the same employer or a subsidiary or affiliate thereof.

If the beneficiary will be serving the United States employer in a managerial or executive capacity, a qualified beneficiary may be classified as an L-1A nonimmigrant alien. If a qualified beneficiary will be rendering services in a capacity that involves "specialized knowledge," the beneficiary may be classified as an L-1B nonimmigrant alien. *Id.*

Section 214(c)(2)(B) of the Act, 8 U.S.C. § 1184(c)(2)(B), provides the statutory definition of specialized knowledge:

For purposes of section 101(a)(15)(L), an alien is considered to be serving in a capacity involving specialized knowledge with respect to a company if the alien has a special knowledge of the company product and its application in international markets or has an advanced level of knowledge of processes and procedures of the company.

Furthermore, the regulation at 8 C.F.R. § 214.2(l)(1)(ii)(D) defines specialized knowledge as:

[S]pecial knowledge possessed by an individual of the petitioning organization's product, service, research, equipment, techniques, management or other interests and its

application in international markets, or an advanced level of knowledge or expertise in the organization's processes and procedures.

The regulation at 8 C.F.R. § 214.2(l)(3) states that an individual petition filed on Form I-129 shall be accompanied by:

- (i) Evidence that the petitioner and the organization which employed or will employ the alien are qualifying organizations as defined in paragraph (l)(1)(ii)(G) of this section.
- (ii) Evidence that the alien will be employed in an executive, managerial, or specialized knowledge capacity, including a detailed description of the services to be performed.
- (iii) Evidence that the alien has at least one continuous year of full-time employment abroad with a qualifying organization within the three years preceding the filing of the petition.
- (iv) Evidence that the alien's prior year of employment abroad was in a position that was managerial, executive or involved specialized knowledge and that the alien's prior education, training, and employment qualifies him/her to perform the intended services in the United States; however, the work in the United States need not be the same work which the alien performed abroad.

II. The Issue on Appeal

The issue on appeal is whether the petitioner established that the beneficiary possesses specialized knowledge and that he will be employed in a specialized knowledge capacity.

The petitioner is engaged in the sale of injected mold products designed and manufactured by its Japanese parent company, [REDACTED]. The petitioner was established in 2008 and currently has two employees. The petitioner indicates that its long-term goal is to be responsible for the design, sale and maintenance of the injected mold products manufactured in Japan. The petitioner seeks to hire the beneficiary, who currently serves as a mold and tool designer for the parent company, to start its design department in the United States.

The petitioner provided a list of eleven duties to be performed by the beneficiary in the proposed mold and tool designer position, which include: overall design of plastic injection molds and fixtures; design, modify and improve existing tools and fixtures, create designs for new jigs, fixtures, molds and test fixtures; study specifications to resolve design problems; conduct tests to evaluate tooling feasibility; identify and order standard and special material components; and consult with shop personnel to identify possible design changes.

The record reflects that the beneficiary has been employed by the petitioner's parent company in a similar role since August 2008. Counsel stated that the beneficiary "possesses special knowledge regarding the design process of the products manufactured by the parent company." Counsel stated that the beneficiary "gained most of his knowledge through his former employer, [REDACTED], that had been a subsidiary of [REDACTED]. Counsel emphasized that, during his tenure at [REDACTED] the beneficiary "gained extensive knowledge by attending several training courses, some of which were provided by [REDACTED]

According to the beneficiary's resume, he worked for [REDACTED] as a mold production engineer and as a mold designer/tool designer from June 1995 until December 2005. The beneficiary indicates that he received the following training at [REDACTED] in Japan:

June 20, 2002 to July 4, 2002 and August 31, 2001 to September 12, 2001	CAD CAM operation (using Unisys CADCEUS Software)
September 28, 1998 to March 26, 1999	1. CAD CAM operation 2. Injection Mold Design 3. NC Programming (using CATIA software)

The petitioner provided a certificate issued by The Association for Overseas Technical Scholarship (AOTS) Japan indicating that the beneficiary "completed the general orientation course at this Association and the technical training course in the field of 1. CAD/CAM Operation, 2. Injection Mold Design, 3. NC Programming at [REDACTED] sponsored by [REDACTED]. The certificate indicates that the training was completed between September 28, 1998 and March 25, 1999.

Counsel further explained that the beneficiary "possesses knowledge that is advanced and noteworthy, and he has gained this knowledge through years of experience and training received from the parent company, [REDACTED]." Counsel added that the beneficiary's knowledge "cannot be easily transferred to another employee."

Following the petitioner's initial submission, the director issued a Request for Evidence (RFE) instructing the petitioner to submit, *inter alia*, the following:

- **Special or Advanced Duties:** Explain how the duties the alien performed abroad and those he or she will perform in the United States are different from those of other workers employed by the petitioner or other U.S. employers in this type of position.
- **Petitioner's Product:** Explain, in more detail, exactly what is the equipment, system, product, technique, or service of which the beneficiary of this petition has specialized knowledge, and indicate if it is used or produced by other employers in the United States and abroad.
- **Beneficiary's Training or Experience:** Explain how the beneficiary's training or experience is uncommon, noteworthy, or distinguished by some unusual quality and not generally known by practitioners in the alien's field in comparison to that of others employed by the petitioner in this particular field.

The petitioner's response included a letter from counsel, who provided the following responses to the requests referenced above:

9. **Special or Advanced Duties** – The beneficiary's proposed position is a tool designer position. The petitioner does not employ any other designers at this time. Therefore, the beneficiary's proposed duties cannot be compared to the duties of others employed by the petitioner. Furthermore, the beneficiary's duties are different from

other workers employed by U.S. employers as designers because although the educational background might be the same, other workers will lack the knowledge regarding the petitioner's products. In order for a designer to design, modify and improve existing tools and fixtures, the designer must have advanced knowledge about the employer's product line. The beneficiary has gained experience and has been assigned advanced duties through the years as he has worked for [REDACTED] or one of its subsidiaries.

10. **Petitioner's Product** - The beneficiary has specialized knowledge regarding the design and manufacturing process for plastic injected molds. [REDACTED] established in 1977, designs, manufactures and sells everything from household products to automobile parts. There are many other companies that are in the same line or similar line of business in the industry. It should be noted that every business entity uses different quality materials and different techniques and processes for manufacturing their products. Although [REDACTED] is not unique in what they produce, there are unique characteristics as to how it designs and manufactures its products. Those differences make some companies more competitive in their pricing and other areas. If every mold injections manufacturer used the same material and followed the exact same procedure, then the products would be identical and there would be no competition. Therefore, although there are many companies that manufacture plastic injected molds, and the process might seem generally the same, the details of the design and manufacturing process give some companies the competitive edge over others.

11. **Beneficiary's Training or Experience** - The beneficiary possesses a Bachelor of Science degree, but what distinguishes him is the training he has received from [REDACTED]. Although he has been employed by [REDACTED] just since 2008; he has approximately over 15 years of experience in the mold manufacturing industry, most of which has been attained through his former employer, [REDACTED] that was [REDACTED] subsidiary The trainings conducted by [REDACTED] were provided for its employees and were different than what is generally provided in the industry. These trainings were specific to the company's products. There are many companies in the industry that provide training classes for their employees because the training is specific as to how that company handles the design and manufacturing process.

Counsel concluded by stating that the beneficiary "possesses knowledge about the petitioner's product that can only be gained through prior experience with the parent company."

The director denied the petition, concluding that the petitioner failed to demonstrate that the beneficiary possesses specialized knowledge or that he will be employed in a position requiring specialized knowledge. In denying the petition, the director acknowledged the beneficiary's job duties, training and experience, but concluded that the petitioner failed to explain or document how the beneficiary's knowledge is either specialized compared to other mold designer/tools designers working in the petitioner's industry, or how his knowledge of the processes and procedures of the company is advanced among other similarly employed workers within the company.

On appeal, counsel emphasizes that "the U.S. position requires that the employee have specialized knowledge of the techniques and methods currently in place at the parent company's facility in Japan," and notes that the petitioner will use the same design software used by its parent company which is "different than the software that is traditionally used by companies in the U.S."

Counsel emphasizes that the beneficiary has gained advanced knowledge through years of experience and training with the parent company which included "company specific training " and "company specific experience in the design process and product production." Counsel asserts that it would be difficult or impossible to start a design department in the United States without having an individual that understands the company's design and manufacturing process.

In addition, counsel states that the beneficiary was selected over other similarly employed mold designers because he "is the only one that has knowledge and expertise regarding the petitioner's products and services in international markets," and "is the only one who is fluent in Japanese and English and has been trained in the Japanese design software program that the petitioner will be using in the U.S." Counsel claims that this combination of knowledge and experience qualifies the beneficiary as having "specialized knowledge" as defined at section 214(c)(2)(B) of the Act.

In response to the director's finding that the record does not establish why the proposed duties cannot be performed by "any mold designer/tool designer," counsel asserts that the position "requires skills that are not found in any mold designer" because U.S. designers would not have the knowledge required to work with the Japanese design software used by the parent company, and which will also be used at the petitioner's facility. Counsel asserts that it would take years to prepare a U.S. mold designer for the position because he or she would have to be transferred to the parent company, learn Japanese, undergo several years of training on the design and manufacturing of its products, and undergo training on the Japanese software.

In support of the appeal, the petitioner submits a letter from an existing client, [REDACTED], which states that [REDACTED] will sign a \$1.8 million contract with the petitioner if it starts a design department in the United States. The petitioner also submits two certificates of training issued to the beneficiary by [REDACTED], Japan in 2008. The certificates indicate that he completed: (1) a 19-day course in CAD/CAM Operation using Cadmeister Software (2D and 3D Operation and Mold Designing); and (2) a three-week technical training course in the use of "ISE mold design standards parts."

III. Analysis

Upon review, the petitioner's assertions are not persuasive. The petitioner has failed to provide sufficient evidence that the beneficiary has specialized knowledge or that it will employ the beneficiary in a specialized knowledge capacity.

In order to establish eligibility, the petitioner must show that the individual will be employed in a specialized knowledge capacity. 8 C.F.R. § 214.2(l)(3)(ii). The statutory definition of specialized knowledge at Section 214(c)(2)(B) of the Act is comprised of two equal but distinct subparts. First, an individual is considered to be employed in a capacity involving specialized knowledge if that person "has a special knowledge of the company product and its application in international markets." Second, an individual is considered to be

serving in a capacity involving specialized knowledge if that person "has an advanced level of knowledge of processes and procedures of the company." See also 8 C.F.R. § 214.2(l)(1)(ii)(D). The petitioner may establish eligibility by submitting evidence that the beneficiary and the proffered position satisfy either prong of the definition.

USCIS cannot make a factual determination regarding the beneficiary's specialized knowledge if the petitioner does not, at a minimum, articulate with specificity the nature of the claimed specialized knowledge, describe how such knowledge is typically gained within the organization, and explain how and when the beneficiary gained such knowledge. Once the petitioner articulates the nature of the claimed specialized knowledge, it is the weight and type of evidence which establishes whether or not the beneficiary actually possesses specialized knowledge. See *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010). The director must examine each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true. *Id.*

As both "special" and "advanced" are relative terms, determining whether a given beneficiary's knowledge is "special" or "advanced" inherently requires a comparison of the beneficiary's knowledge against that of others in the petitioning company and/or against others holding comparable positions in the industry. The ultimate question is whether the petitioner has met its burden of demonstrating by a preponderance of the evidence that the beneficiary's knowledge or expertise is special or advanced, and that the beneficiary's position requires such knowledge.

Here, the petitioner claims on appeal that the beneficiary has "special knowledge of the company product and its application in international markets." See Section 214(c)(2)(B) of the Act.

In examining the beneficiary's specialized knowledge and whether the offered position requires specialized knowledge, the AAO will look to the petitioner's description of the job duties and the weight of the evidence supporting any asserted specialized knowledge. See 8 C.F.R. § 214.2(l)(3)(ii). The petitioner must submit a detailed job description of the services to be performed sufficient to establish specialized knowledge. *Id.*

While the petitioner submitted a fairly lengthy list of job duties for the beneficiary's current and proposed position, the duties listed could have described any mold and tool designer position, and offered no insight into how the duties require the application of specialized knowledge specific to the petitioner's products and techniques and their application in international markets. The petitioner's initial claim rested on counsel's unsupported assertion that the beneficiary "possesses special knowledge regarding the design process of the products manufactured by the parent company," gained through years of experience and training. The petitioner did not articulate how familiarity with its parent company's design process constitutes "special knowledge" within the organization, nor did it explain or document the claimed design processes or differentiate them from those used in its industry. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r 1972)).

While the director provided the petitioner an opportunity to explain how the beneficiary's duties are special or advanced, to further explain the equipment, product or process of which the beneficiary has specialized knowledge, to compare its products and processes to those of other companies in the industry, and to explain

how the beneficiary's training or experience can be distinguished from others employed by the petitioner, the petitioner responded to the RFE with additional vague and unsupported assertions from counsel.

For example, counsel stated that the beneficiary's proposed duties are different from other workers employed as designers because other workers "will lack the knowledge regarding the petitioner's products." Counsel's claim was based on the premise that all companies in the industry use different materials, design processes and manufacturing processes to produce essentially the same products, so it follows that (1) the petitioner's processes are not the same as those used by other companies, and (2) the beneficiary, as someone who is experienced with those processes, has special knowledge specific to the petitioner's products. Counsel noted that "the process might seem generally the same" but that the "details of the design and manufacturing process give some companies the competitive edge." Counsel did not specify what "details" of the petitioner's design or manufacturing process differentiate it from its competitors or specify how much training would need to be provided to an experienced and otherwise qualified mold and tool designer in order to familiarize him or her with the unspecified "details" of the petitioner's design processes.

While the AAO does not doubt that different manufacturers utilize their own design and manufacturing processes to produce essentially the same products, the petitioner must still articulate and explain how this beneficiary's knowledge of its specific processes or products rises to the level of specialized knowledge. If the petitioner claims that its design and manufacturing process or products are different from what is generally found in the industry, it must still establish that qualities of the particular process or product require the beneficiary to have knowledge beyond what is common among similarly-employed workers. This has not been established in this matter. The general claim that workers outside of the organization do not have experience with the petitioner's exact design process for manufacturing injection molds is not sufficient to establish that the position requires specialized knowledge as defined in the statute and regulations.

Overall, the petitioner's response to the RFE contained little more than counsel's conclusory assertions regarding the claimed specialized knowledge. Again, going on record without documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165 (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r. 1972)). Both in the initial filing, and in response to the RFE, the petitioner failed to articulate with specificity the nature of the claimed specialized knowledge for the offered position. Accordingly, the director properly denied the petition.

Further, the petitioner's assertion that the beneficiary possesses the claimed specialized knowledge of the petitioner's products and processes and their application in international markets rests, in significant part, on counsel's claim that the beneficiary worked for an alleged former subsidiary of the foreign parent company, [REDACTED], for ten years. The only evidence offered in support of this claim was the above-referenced certificate from the Association for Overseas Technical Scholarship indicating that the [REDACTED] sponsored the beneficiary's completion of technical training at [REDACTED] in 1998. Neither this document nor counsel's unsupported assertions can be accepted as evidence that [REDACTED] was a subsidiary of [REDACTED] during the beneficiary's tenure with the [REDACTED] company. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Based on the foregoing, the petitioner failed to establish that the beneficiary has special knowledge of the company product and its application in international markets.

The second prong of the specialized knowledge definition requires "an advanced level of knowledge of processes and procedures of the company." The petitioner asserted that the beneficiary meets this definition due to his many years of employment with the petitioner's parent company and its claimed former subsidiary, the majority of which was gained with [REDACTED]. Again, the petitioner failed to provide corroborating evidence that the beneficiary's employer in the [REDACTED] is in fact a former subsidiary of the foreign parent. However, even if it had established the claimed relationship, the petitioner did not show that the processes and procedures of the two companies are currently the same.

The record shows that the beneficiary is one of 21 designers working for the foreign employer, and that he reports to a "design leader," who, in turn, reports to a design supervisor. The beneficiary has approximately 20 months of experience with the foreign parent company and completed several weeks of training. However, the petitioner has not established that he has an advanced level of knowledge of the company's processes and procedures relative to his peers, or claimed that the nature of the position is such that all mold and tool designers working for the company possess advanced knowledge. Further, as discussed above, the petitioner has not sufficiently described or documented its design and manufacturing processes.

On appeal, counsel introduces for the first time a claim that the beneficiary's specialized knowledge is based, in part, on his knowledge of Japanese computer design software used by the parent company, and on his fluency in both Japanese and English. The AAO notes that the petitioner was provided with an opportunity to articulate and document the nature of the claimed specialized knowledge prior to the adjudication of the petition and failed to mention the beneficiary's language skills or computer design software knowledge. Counsel offers no explanation for the omission of these claims in the petitioner's RFE response. Under the circumstances, the AAO need not consider the sufficiency of the new claims submitted on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *see also Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988).

Nevertheless, counsel does not specify or document the software used by the foreign entity, but simply identifies it as Japanese software that is unknown to mold and tool designers working in the United States. Again, without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Similarly, the petitioner did not explain how the beneficiary's fluency in English and Japanese qualifies as specialized knowledge of the petitioner's products or processes. While such fluency would enable the beneficiary to communicate with the U.S. and foreign staff and would undoubtedly be an asset, it is not encompassed by the statutory or regulatory definition of specialized knowledge.

The petitioner did submit a training certificate which states that the beneficiary "completed the technical training course in the field of CAD/CAM Operation using Cadmeister Software." Assuming this is the software to which counsel is referring, the petitioner failed to explain how the beneficiary's proficiency with such software contributes to his specialized knowledge. CADmeister is not internally-developed software, and the petitioner provided no evidence regarding its use within the company or its general use in the petitioner's field of business. The petitioner has not explained why another otherwise qualified designer, if not already

proficient with CADmeister, could not become proficient through a similar 19-day training course. Again, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165 (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r 1972)).

The beneficiary's resume also states that he is familiar with CADCAM software such as: "CAMCORE Handy Win for 2 Dimensional CADCAM," "Unisys CADCEUES for 3Dimensional Modeling," "CADCEUS for Mold Designing," "WORKNC for 3d cam," "Top Solid (for 3D modeling and 2D drawing)." It also stated that he is knowledgeable about many of the machines used in manufacturing molds, such as: "CNC MILLING MACHINE," "DIE SINKER EDM MACHINE," and "WIRE EDM MACHINE." However, the petitioner has not claimed that knowledge of these machines and software constitutes knowledge specific to the petitioner's processes or that any of this knowledge qualifies him as a specialized knowledge worker.

In visa proceedings, the burden is on the petitioner to establish eligibility. *Matter of Brantigan*, 11 I&N Dec. Dec. 493 (BIA 1996). The petitioner must prove by a preponderance of the evidence that the beneficiary is fully qualified for the benefit sought. *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010). In evaluating the evidence, eligibility is to be determined not by the quantity of evidence alone, but by its quality. *Id.* The director must examine each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true.

The AAO acknowledges the petitioner's preference to transfer a mold/tool designer from the foreign entity and does not doubt that the beneficiary is qualified to perform the duties of the position. However, the petitioner has failed to establish through submission of relevant, probative evidence that the beneficiary possesses either a special knowledge of the petitioner's product and its application in international markets, or an advanced level of knowledge of the company's processes and procedures. Accordingly, the appeal will be dismissed.

IV. Conclusion

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.